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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/901,244	07/09/2001	Gabriel Raviv	29888/36772A	8384
4743	7590	12/01/2006	EXAMINER	
MARSHALL, GERSTEIN & BORUN LLP 233 S. WACKER DRIVE, SUITE 6300 SEARS TOWER CHICAGO, IL 60606				FOREMAN, JONATHAN M
ART UNIT		PAPER NUMBER		
		3736		

DATE MAILED: 12/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	RAVIV ET AL.
Examiner Jonathan ML Foreman	Art Unit 3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 19 September 2006.
2a) This action is FINAL. 2b) This action is non-final.
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 60-64 and 66-73 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) Claim(s) _____ is/are allowed.
6) Claim(s) 60-64 and 66-73 is/are rejected.
7) Claim(s) _____ is/are objected to.
8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) Notice of Informal Patent Application
6) Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114 was filed in this application after a decision by the Board of Patent Appeals and Interferences, but before the filing of a Notice of Appeal to the Court of Appeals for the Federal Circuit or the commencement of a civil action. Since this application is eligible for continued examination under 37 CFR 1.114 and the fee set forth in 37 CFR 1.17(e) has been timely paid, the appeal has been withdrawn pursuant to 37 CFR 1.114 and prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 9/19/06 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 73 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 73 recites the limitation "each of the plurality of annular flanges" in lines 12 - 13. There is insufficient antecedent basis for this limitation in the claim rendering the claim indefinite in that it is unclear if all of the flanges are annular.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 60 – 64 and 66 - 72 are rejected under 35 U.S.C. 102(b) as being anticipated by Baum ('038). Baum teaches an ear probe tip including a body portion **11** having a first end and a second end; a passage **20** formed in the body portion including a surface extending from a first opening at the first end to a second opening at the second end; an outer surface of the body portion; and a plurality of annular flanges **41,42,43** extending substantially perpendicular from the outer surface. Each of the plurality of annular flanges has a substantially circular shape and a diameter, where the diameter of adjacent flanges decreases in size from the first end toward the second end (see Fig. 1). A flange closest to the second opening is offset from the second end. The passage has a cylindrical shape. The body portion has a frusto-conical shape (see Fig. 1). The plurality of annular flanges are disposed proximate to the middle portion of the body portion. The first opening includes a chamfer (see Fig. 4). The passage has an increased diameter portion **22** adjacent the first opening and an incrementally decreasing diameter from the first end toward the second end. A ring **21** is formed on the outer surface adjacent the first end and the outer surface has an incrementally decreasing diameter from the first end toward the second end **31,32,33**. The first end includes a surface configured to engage a base portion of the probe.

6. The claims of the instant application effectively claim the subcombination of an ear probe tip that is intended to be used with a probe having an outer surface, a length to be covered by the probe tip, and a probe end. In order to meet the limitations of the claims, a prior art reference must merely be capable of receiving an appropriately sized probe in the passage through the body portion so that the passage is substantially in contact with the probe along the length to be covered, so that the second opening is proximate the probe end, and so that the second end extends past the probe end a distance sufficient to prevent the probe from contacting the patient's ear yet insufficient to form a portion of the acoustic path from the probe end into the patient's ear canal. The probe tip

of Baum meets all of the structural limitations of the claims and is capable of performing the aforementioned intended uses with a probe having appropriate dimensions.

7. Claims 60 – 64, 68, 71 and 72 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 5,653,239 to Pompei et al.

In regards to claims 60 – 64, 68, 71 and 72, Pompei et al. teaches an ear probe tip (26) including a body portion having a first end and a second end; a passage formed in the body portion including a surface extending from a first opening at the first end to a second opening at the second end (Col. 6, lines 10 – 12); an outer surface of the body portion; and a plurality of annular flanges (27) extending substantially perpendicular from the outer surface. Each of the plurality of annular flanges has a substantially circular shape and a diameter, where the diameter of adjacent flanges decreases in size from the first end toward the second end (Figure 3b). A flange closest to the second opening is offset from the second end. The passage has a cylindrical shape. The body portion has a frusto-conical shape. The plurality of annular flanges are disposed proximate to the middle portion of the body portion. A ring (27) is formed on the outer surface adjacent the first end and the outer surface has an incrementally decreasing diameter from the first end toward the second end. The first end includes a surface configured to engage a base portion of the probe.

The claims of the instant application effectively claim the subcombination of an ear probe tip that is intended to be used with a probe having an outer surface, a length to be covered by the probe tip, and a probe end. In order to meet the limitations of the claims, a prior art reference must merely be capable of receiving an appropriately sized probe in the passage through the body portion so that the passage is substantially in contact with the probe along the length to be covered, so that the second opening is proximate the probe end, and so that the second end extends past the probe end a distance sufficient to prevent the probe from contacting the patient's ear yet insufficient to

form a portion of the acoustic path from the probe end into the patient's ear canal. The probe tip of Baum meets all of the structural limitations of the claims and is capable of performing the aforementioned intended uses with a probe having appropriate dimensions.

In regards to claim 73, Pompei et al. discloses an ear probe (20) having an outer surface, a length to be covered and a first probe end; an ear probe tip (26) having a body portion of the same length as the length to be covered and having a first end and a second end; a passage formed within the body portion, the passage having a first opening at the first end, a second opening at the second end and a surface extending within the body portion between the first opening and the second opening (Col. 6, lines 10 – 12), the passage receiving the probe such that when the probe is disposed in the passage the second opening is proximate to the first probe end (Figure 3b); an outer surface of the body portion; and a plurality of flanges (27) extending from the outer surface, each of the plurality of flanges having a diameter, the diameter of adjacent flanges decreasing in size from the first end toward the second end (Figure 3b), wherein a distance between the first probe end and the second opening is insufficient to form an acoustic channel.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 60-64 and 70-73 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kerouac ('051) in view of Baum ('038).

Kerouac teaches an ear probe tip 12 for use with a probe having an outer surface,

a length to be covered by the probe tip, and a probe end. The ear probe tip 12 includes a body portion having a first end and a second end; a passage formed in the body portion including a surface extending from a first opening at the first end to a second opening at the second end; and an outer surface of the body portion. The passage has a cylindrical shape and is configured to be disposed about the probe such that the passage surface is substantially in contact with the probe along the length to be covered and so that the second opening is proximate the probe end. The body portion has a frusto-conical shape with a first end having a surface configured to engage a base portion of the probe. The second end of the probe tip extends past the probe end a distance sufficient to prevent the probe from contacting the patient's ear yet insufficient to form a portion of the acoustic path from the probe end into the patient's ear canal. Kerouac teaches all of the limitations of the claims except that the outer surface of the body portion includes a plurality of annular flanges extending substantially perpendicular from the outer surface and wherein the flange closest the second opening is offset from the second end.

Baum, as discussed hereinabove, teaches that it is known in the art to provide the outer surface of an ear probe tip with a plurality of annular flanges 41,42,43 extending substantially perpendicular from the outer surface and wherein the flange closest the second opening is offset from the second end which will engage and become wedged against the surrounding surface portions of the outer ear cavity in order to automatically establish an acoustic seal therewith (col. 4, lines 4-17).

It would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to provide the outer surface of an ear probe tip similar to that of Kerouac with a plurality of annular flanges in view of the teachings of Baum in order to

automatically provide an acoustic seal with the outer ear cavity that prevents propagation of sound through the space of the ear cavity surrounding the exterior of the ear probe tip.

Response to Arguments

10. Applicant's arguments filed 9/19/06 have been fully considered but they are not persuasive. Applicant asserts that Baum fails to disclose a plurality of flanges extending substantially perpendicularly from the outer surface of the ear probe tip. However, the Examiner disagrees. The term "substantially" is often used in conjunction with another term to describe a particular characteristic of the claimed invention. It is a broad term. *In re Nehrenberg*, 280 F.2d 161, 126 USPQ 383 (CCPA 1960). See MPEP 2173.05(b) [R-5]. Therefore, the Examiner considers the plurality of flanges as disclosed by Baum as extending substantially perpendicular from the outer surface of the ear probe tip (See Figure 1).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan ML Foreman whose telephone number is (571)272-4724. The examiner can normally be reached on Monday - Friday 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571)272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


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